

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed April 28, 2010. Claims 2-5, 7-10, 14-16, and 20-39 were pending and rejected in view of cited art. Claims 2, 4, 20, and 29 are amended. Claims 2-5, 7-10, 14-16, and 20-39 remain pending in view of the above amendments, with claims 2, 20, and 29 being independent.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

B. EXAMINER'S INTERVIEW

Applicant's express their appreciation to the Examiner for conducting an interview with Applicant's representative on July 13, 2010. The substance of the interview is included in this response.

C. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 2, 3, 5, 7-10, 14-16, and 34 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,674,231 (*Green*) in view of U.S. Patent No. 6,447,540 (*Fontaine*) and further in view of U.S. Patent No. 5,868,755 (*Kanner*). Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Green* in view of *Fontaine* and *Kanner*, and further in view of U.S. Patent No. 5,593,412 (*Martinez*). Claims 20-31, 33, and 35-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Green* in view of *Fontaine* and *Kanner*, and further in view of *Martinez*. Claim 32 was rejected under 35 U.S.C. §

103(a) as being unpatentable over *Green* in view of *Fontaine* and *Kanner*, and further in view of *Martinez*. Applicant respectfully traverses the Examiner’s rejection for obviousness on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims.

Applicant respectfully submits that the independent claims as presented for reconsideration are not anticipated nor made obvious by *Green* either singly or in combination with any other cited reference of record.¹ In particular, *Green* discloses that “the elongated body 20 of surgical apparatus 10 is introduced into the interior lumen 102 of blood vessel 104 through a conventional cannula 100 which had previously been extend through the hole 106 formed in the wall of blood vessel 104 during catheterization procedure” (col. 7, ll. 18-23). It is the surgical apparatus 10 that includes the surgical clip 22 and not the conventional cannula 100. *Green* neither teaches nor suggests passing medical devices through the lumen of the surgical apparatus 10, rather the surgical apparatus is disposed within the lumen of the conventional cannula 100.

Thus, *Green* clearly does not anticipate or make obvious applicant’s claimed method (e.g., see claims 2, 20, and 29) which requires, *inter alia*,

- “inserting a distal end of *an elongate member* into an opening through tissue, the elongate member having . . . a lumen extending from the distal end to the proximal end, and a skin overlying at least a portion of the outer surface of the elongate member between the distal end and the proximal end and at least partially overlying a carrier assembly slidably disposed on the elongate member and carrying the closure element; *deploying one or more medical devices through the lumen of the elongate member; following removal of the one or more medical devices from within the lumen, advancing the carrier assembly distally along the elongate member* from the proximal end towards the distal end of the elongate member, . . .” (Claim 2, emphasis added), or in the alternative “ . . . *following removal of the one or more medical devices from within the lumen, inserting a distal end of an obturator through the lumen of the elongate member and through the opening through tissue; advancing the carrier assembly distally along the elongate member* from

¹ Any amendments to claims other than those which are expressly relied upon in overcoming the rejections on art have been made simply to insure consistency in claim language, to correct typographical or grammatical errors, or to correct other errors of a formal, non-substantive nature, but not to otherwise narrow the claims in scope for any reason.

the proximal end towards the distal end of the elongate member" (Claim 20, emphasis added).

- "*following positioning a guidewire through the opening through tissue, inserting a distal end of an elongate member into an opening through tissue along the guidewire . . . inserting one or more instruments through the lumen into the blood vessel to perform a therapeutic or diagnostic procedure; following removal of the one or more instruments, including the guidewire, advancing the carrier assembly distally along the elongate member from the proximal end towards the distal end of the elongate member.*" (Claim 29, emphasis added)

Accordingly, for at least the reasons noted, independent claims 2, 20, and 29 and the claims depending therefrom² are neither anticipated nor made obvious by *Green*, either singly or in combination with any other prior art of record³, and thus reconsideration and withdrawal of the rejection under Section 103 is respectfully requested.

D. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner

² Emphasis herein of the differences between the independent claims and the prior art are equally applicable to the dependent claims 3-5, 7-10, 14-16, 21-28, and 30-39, but this does not mean, on the other hand, that these are necessarily the *only* differences between the claimed invention and the prior art of record. Applicant thus does not acquiesce in any asserted rejections of the dependent claims 3-5, 7-10, 14-16, 21-28, and 30-39.

³ *Fontaine*, *Kanner*, and *Martinez* were cited as secondary references. *Fontaine* was cited for the proposition that it discloses "a skin or sleeve (16) with a weakened region" (Office Action, p. 5). *Kanner* was cited for the proposition that it discloses "a skin 1 being bonded to the outer surface of the elongate member by an adhesive" and *Martinez* was cited for the proposition that it discloses "the skin (18) comprising a flap (fingers 51-55) extending generally axially along the outer surface of the elongate member (12)" (Office Action, pp. 5 and 6). That said, none of these references otherwise add anything in terms of reading on the claims as amended herein, particularly in reference to those claimed limitations noted above which clearly define over *Green*. Thus, even assuming *arguendo* that any of the references to *Fontaine*, *Kanner*, and *Martinez* are properly combinable with *Green*, such combinations are clearly distinguished by the claims for the reasons already noted in reference to *Green*.

provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 28th day of July, 2010.

Respectfully submitted,

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